IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE TWENTY THIRD DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT APPEAL NO : 860 of 2002

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 18/02/2002 in WA NO : 6268 OF 1996 on the file of the High Court.)

Between:

Vijaya Durga Enterprizes, Taj Towers Hotel, Governopet, Eluru Road, Vijayawada, rep by its Mg.Partner.

..... APPELLANT

AND

1 Municipal Corporation of Vijayawada, Vijayawada, rep byi its Commissioner.
2 Municipal Corporation of Vijayawada, Vijayawada, rep by its Medical and health Officer (II).
3 Municipal Corporation of Vijayawada, 17th Division, S.S.II, Vijayawada, rep by its Sanitary Inspector.

.....RESPONDENT(S)

Counsel for the Appellant:MR.P.V.RAMA SARMA

Counsel for the Respondent No.: MR.T.S.VENKATARAMANA

The Court made the following :

The Hon’ble Sri Justice B. Sudershan Reddy

a n d

The Hon'ble Sri Justice K.C. Bhanu

WRIT APPEAL No. 860 OF 2002

O R D E R: (per Sri Justice K.C. Bhanu)

Assailing the order passed by a learned single Judge of this court in W.P. No. 6268 of 1996 dated 18.2.2002, the present writ appeal is filed.

The brief facts that are necessary for the disposal of the present writ appeal may be delineated as follows:

The unsuccessful petitioner-appellant herein applied to the Muncipal Corporation of Vijayawada for grant of trade licence on 18.8.1990 for doing hotel business. The hotel was inaugurated on 30.8.1990. Initially the licence fee for hotel business was estimated at Rs.10,000/- per year. Thereafter, the petitioner paid a sum of Rs.25,000/- towards licence fee for the years 1990-91 and 1991-92. The Corporation agreed to adjust or refund the amount of Rs.5,000/- which was paid in excess, but did not refund or adjust the said amount. There upon, the petitioner was called upon to pay a further sum of Rs.10,000/- towards licence fee for the year 1991-92 without deducting the excess amount of Rs.5,000/-. For the years 1993-94 the Corporation increased the licence fee by 50% and the petitioner was called upon to pay Rs.15,000/-, which was paid. Thereafter the Corporation also increased the licence fee by 10% and the same was also paid. On 2.3.1996 the Corporation issued the impugned proceedings in Rc.F13-4038/95 directing the petitioner to pay Rs.30,975/- in cash towards balance fee for the years 1993-94, 1994-95 and belated fee for the years 1995-96. When the petitioner approached the respondent-Corporation, it is stated that 25% of

additional fee would be levied on the licence fee for the first year for a period of 60 days and thereafter it would be 50% in pursuance of the resolution passed by the then Special Officer. According to the petitioner-appellant, the Special Officer cannot play the role of an elected body and levying such additional fee violates Article 14 of the Constitution. It is further pleaded by the petitioner-appellant that there are no guidelines for fixing the trade licence fee. The levying of penalty pursuant to the trade licence resolution is equally bad. Therefore, questioning such action of the respondents, the petitioner filed the writ petition.

The respondents filed a counter affidavit stating that there is no discrimination shown against the petitioner in levying the licence fee. As per the licence fee rules, the petitioner has to pay Rs.10,000/- towards licence fee for the trade operation of Boarding and Lodging for the year 1990-91. As the petitioner did not pay the amount before the stipulated date, it has to pay 50% belated fee which it paid willingly under challan.

The learned single Judge, relying upon a decision of the Supreme Court in *Secunderabad Hyd. Hotel Owners Assn. v. Hyd. Municipal Corporation*, held that the Corporation has chosen the quantum of rent paid as the criterion of fee to be charged and that the imposition of additional fee is also within the terms and conditions of the licence as contemplated u/Sec. 622 (1) and (2) of the of the Act and, in the light of the principles laid down by the apex Court and the provisions of the Act, the learned single Judge further held that the levy of licence fee and its enhancement subsequently is within the ambit of the statute and it cannot be said to be excessive and accordingly dismissed the writ petition. Assailing the same, the present writ appeal is filed.

Learned counsel for the petitioner Sri P.V. Rama Sarma fairly conceded that the Commissioner has got power to enhance the licence fee in the absence of elected body, but he says, that in the instant case there is no reasonable basis for fixing the licence fee. He

further contended that the licence fee in respect of the hotels which are having area more than the present appellant-Hotel was fixed less than what was fixed in case of the appellant-Hotel and it is a clear act of arbitrary exercise of power by the Commissioner and, therefore, the impugned proceedings suffers from serious legal infirmities.

On the other hand, Sri V. Venkataramana, learned counsel appearing for the respondents, contended that there is no discrimination shown against the appellant in fixing the licence fee; that the Corporation has fixed the licence fee based on the annual rent of the appellant-hotel and the annual rent getting from the hotel has been furnished by the appellant itself; that in respect of the hotels certain guidelines have been prescribed for determining the licence fee by the Corporation and in pursuance of those guidelines the licence fee has been fixed and hence, the learned single Judge rightly dismissed the writ petition and there are no grounds to interfere with the order under appeal.

It is well settled that while exercising the power of judicial review the Court is more concerned with the decision making process than the merits of the decision itself. But, while examining and scrutinising the decision making process it become inevitable to also appreciate the facts of a given case, as otherwise, the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. Therefore, to a limited extent of scrutinising the decision making process it is always open to the court to review the evaluation of the facts by the decision maker.

A copy of the bye-law which was resolved by the respondent-Corporation is made available before this court. A perusal of the same reveals that for levying the licence fee certain norms have been taken into consideration basing on the annual rental value of a particular hotel. In respect of Star hotels, there is one mode of levying licence fee and in respect of other hotels there is another mode of levying licence fee. According to the learned counsel for the respondents, as per the information with regard to the rental value of

the appellant-hotel, as furnished by it, the licence fee was levied and therefore there is no discrimination. The same is not shown to be false or incorrect because the appellant has not produced any other document to show that in respect of other Star hotels levying of licence fee is less than the amount what was imposed in respect of the appellant-hotel. So, there is no basis for the contention of the appellant that there was a discrimination in levying the licence fee with respect to it with that of the other hotels which are similarly placed. Therefore, the appellant failed to substantiate its case with regard to the arbitrary action of the respondent-Corporation in levying the licence fee.

The learned single Judge relied upon a decision of the Supreme Court (referred (1) supra) wherein it is held that the Corporation has chosen the quantum of rent paid as the criterion for the quantum of fee to be charged. In the present case also, basing on the information as furnished by the appellant-hotel with regard to the annual rental value, the licence fee has been fixed. The fixation of the said fee cannot be said to be arbitrary or illegal as it is in accordance with the resolution passed by the respondent-Corporation. This resolution is passed in pursuance of Section 622(2) of the Hyderabad Municipal Corporation Act, 1955 which admittedly applies to Vijayawada Municipal Corporation. Though the said contention has been raised before the learned single Judge and was negatived by the learned single Judge, the learned counsel for the appellant conceded before us that the Commissioner or authorised officer can impose the additional fee. So, the levying of licence fee is not shown to be contrary to the schedule governing the licence fee fixed by the respondent-Corporation as required by Sub-Section (2) of Section 622 of the Hyderabad Municipal Corporation Act. It is specifically stated by the respondent-Corporation in the counter affidavit that fixing of fee was made on the basis of rental value.

Though a plea has been taken that the Special Officer is not empowered under the Act to pass resolution for the year 1995-96 as there was no elected body, the same is totally devoid of merit

because the very object of posting the Special Officer is to perform his statutory functions till an elected body assumes charge. He can enhance the licence fee, but it should be done in consonance with the bye-laws or schedule of rates as approved by the respondent-Corporation. This court cannot issue a Mandamus to fix the trade licence contrary to the schedule which was duly accepted in accordance with law by the respondent-Corporation.

For the aforesaid reasons, we are of the considered opinion that the learned single Judge after consideration of all the aspects rightly dismissed the writ petition. There are no merits in the writ appeal and it deserves to be dismissed.

The writ appeal is accordingly dismissed, in the circumstances, without costs.

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B. Sudershan Reddy, J.

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K.C. Bhanu, J.

Dated 23rd July, 2004.

MVB.

.....REGISTRAR

To

1 Municipal Corporation of Vijayawada, Vijayawada, rep byi its Commissioner.
2 Municipal Corporation of Vijayawada, Vijayawada, rep by its Medical and health Officer (II).
3 Municipal Corporation of Vijayawada, 17th Division, S.S.II, Vijayawada, rep by its Sanitary Inspector.

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